

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6994 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TARULATTA D JANI

Versus

STATE OF GUJARAT

Appearance:

MR MB PARIKH for Petitioner

MR VB GHARANIA AGP for Respondent No. 1, 4

MR HS MUNSHAW for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/06/97

ORAL JUDGEMENT

Petitioner had been offered appointment as a Junior Clerk under the respondent No.1/A on compassionate ground. After her appointment, she was sent for Pre Service Training and was permitted to take Pre Service Training (Post-Training) Examination. The petitioner

having attempted three chances at the said Examination, failed to pass the same. Petitioner apprehending that on account of her failure to pass the aforesaid Examination, she would be discharged from service, instituted a suit being Regular Civil Suit No. 330/93 in the Court of the Civil Judge (SD), Amreli and obtained an injunction against termination of her service. Pending the said suit, she has preferred this petition in the same subject matter.

2. Petitioner has contended that since the petitioner has been offered employment on the compassionate ground, she can not be compelled either to undergo the training nor is she required to pass the aforesaid Examination. In the alternative, she has prayed that even after her failure to pass the Examination within three chances, she is still entitled to some grace chance and the petitioner's service can not be terminated on the ground that she has failed to pass the aforesaid Examination within three chances. She has also claimed that her application for grace chance be granted.

3. Learned AGP Mr.Gharania appearing for the respondents has produced a copy of the Government communication dated 12th May, 1977. Under the said communication, fresh guidelines are issued, interalia, for making compassionate appointment of the dependents of deceased Government servants. Paragraph-10 of the said communication specifically provides that -

" No concession such as exemption from Pre-service departmental examination or in service departmental examination or any other concession in service matters shall be granted to the compassionate appointees..." Besides, this very issue has been considered by this court earlier in Special Civil Application No. 9784/93 decided on 10th November, 1993 (Coram : Mr.Justice K.G.Shah). The court has upheld the termination of service of a Junior Clerk on account of his failure to pass the aforesaid Examination within three chances. The court has further held that no exception can be made for the persons who are appointed on compassionate ground. A similar view has been taken by this court in Special Civil Application No. 2791/94, decided on 23rd September, 1994 (Coram : Mr. Justice S.M.Soni), and in Special Civil Application Nos. 6646/95 and 7067/95 decided on 20th June 1996. In my view the issues raised by the petitioner is no more Res-Integra. In view of the Government communication referred to hereinabove and the above referred judgments of this court, the claim of the

petitioner requires to be rejected. The petitioner's claim that she should be continued in service till her application for grace chance is accepted and she exhausts the grace chance available to her, also requires to be rejected in view of the above referred judgments of this court.

4. Further I am of the opinion that the petitioner having availed of the remedy before the Civil Court, which is competent to grant the reliefs prayed for by the petitioner, this petition is not maintainable.

5. Petition is therefore, dismissed. Rule is discharged. Learned advocate Mr. Parikh appearing for the petitioner requests that the ad-interim order made earlier be continued for a period of two weeks. Request is granted. Ad-interim order made earlier shall continue till 7th July, 1997.

JOSHI